IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 2680 OF 2005

DATE OF DECISION :24-10-2006

Harwinder Singh v Kuldeep Kaur

CORAM : HEMANT GUPTA,J.

Mr.R.C.Dogra, Senior Advocate, with Mr.S.K.Bawa, Advocate, for the petitioner

Mr.Hitesh Kapilish, Advocate, for the respondent

The challenge in the present petition is to the order passed by the learned Rent Controller on 09-04-2005 whereby petition filed by the respondent under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 as amended was allowed.

It is the case of the respondent-landlady that she is an Non-Resident Indian and has gone to Austaria along with her husband but now she and her husband are old and intend to lead a retired life and, therefore, she has returned to India in order to live in India. It has been found by the learned Rent Controller , after the application for leave to defend was allowed and evidence led ,that there are 5 rooms on the ground floor, one tin roof kitchen on the first floor. That the landlady intends to add more rooms on the ground floor . She has also got vacated 3 shops which have been converted as part of residential premises. Therefore, it was found that the premises are required for bonafide use as even daughter of the landlady along with her children is also going to reside with her.

Learned counsel for the petitioner has vehemently argued that the requirement pleaded in the petition was of landlady alone whereas finding has been recorded by the Rent Controller that the premises are required for her daughter and her family as well. A perusal of the site plan Exhibit P-4 shows that small area measuring 8'x14' alone is in possession of the petitioner. The remaining building is in possession of the landlady. The landlady has a right to lead peaceful life comfortably in her house and not that she must share a part of accommodation with the tenant.The

landlady is entitled to privacy and comforts of her house. Therefore, I do not find any illegality or irregularity in the findings recorded by the learned Rent Controller which may warrant interference by this Court.

Dismissed.

However, the order of ejectment shall not be executed for a period of 3 months from today provided petitioner furnishes undertaking by way of affidavit before the Rent Controller within 2 weeks from today to handover the physical possession of the property to the landlady on or before January 31,2007,and on payment the entire arrears of rent within 2 weeks. The further monthly rent shall be payable by 10th of each month.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 4307 OF 2005

DATE OF DECISION : 24-10-2006

The Gurgaon Central Coop.Bank v P.O.Labour Court etc.

Mr.Subhash Ahuja, Advocate, for the petitioner

Mr.Pankaj Jain, Advocate, for the respondents

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order dated 13-07-2005 whereby an application filed by the petitioner for setting aside the ex-parte proceedings initiated on 06-08-2003 was dismissed.

The learned Labour Court found that reference is pending since the year 1999 and the case is fixed for filing of written statement since 20-09-2001.It has been found that 06-08-2003 was the date fixed for filing written statement subject to payment of Rs.1000/-as costs but since neither costs had been paid nor written statement had been filed, therefore, ex-parte proceedings have been rightly initiated against the petitioner . Therefore, the application was found to be without any merit.

Learned counsel for the petitioner has contended that though there is delay in filing the written statement but it is undertaken that the petitioner shall file written statement on the date fixed and also compensate the respondent-workmen for the delay in filing of the written statement by way of payment of costs in additional costs as ordered by the learned Labour Court. It is also pointed out that no evidence has been led by the workmen even after initiating ex-parte proceedings against the petitioner.

Keeping in view the fact that no evidence has been led even though the ex-parte proceedings were initiated against the management on 06-08-2003, I deem it appropriate to set aside the ex-parte proceedings subject to payment of Rs.5000/-as costs. The parties through their counsel are directed to appear before the Labour Court on 27-11-2006 on which date the petitioner shall file its written statement and also shall pay costs of Rs.5000/-along with costs as imposed by the learned Labour

Court earlier. If written statement and costs are not paid on the said date, the ex-parte proceedings shall remain operative.

With the said direction, the present revision is disposed of.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CIVIL REVISION 4823 OF 2004

DATE OF DECISION;24-10-2006

Gurpal Singh & another v Piara Singh & others

Mr.J.S.Brar, Advocate, for the petitioners

Mr.Kamaldeep Singh, Advocate, for respondent No.13

HEMANT GUPTA, J.

The plaintiffs are in revision aggrieved against the order dated 30-08-2003 whereby an application filed by the petitioners for correction of date ofdeath of deceased-Bohar Singh, Manjit Kaur and Lakhbir Singh as 31-12-1999 instead of 01-01-2000 was declined.

The learned trial Court has declined such application on the ground that it is an attempt to delay the proceedings and amendment cannot be allowed after the trial has commenced as the Court can allow amendment only after arriving at a conclusion that inspite of due diligence, the party could not raise the matter before commencement of the trial.

The reasoning given by the learned trial Court suffers from patent illegality and irregularity. The suit was filed on 15-02-2000 and, therefore, the amended provisions of CPC contained in Order 6 Rule 17 CPC are not applicable in respect of pleadings filed prior to the said amendment in terms of Section 16(2)(b) of Code of Civil Procedure(Amendment)Act,2002. The plaintiffs have sought declaration on account of the deaths of Bora Singh, Manjit Kaur and Lakhbir Singh. By amendment, the plaintiffs are not to gain anything except to bring the facts in correct perspective. Still further it is the plaintiff who has sought the correction of date of death.

Therefore, I am of the opinion that the order passed by the learned tiral Court decling the correction in the date of death is not sustainable in law.

Consequently, the said order is set aside. The petitioners are permitted to amend the pleadings so as to describe the date of death as 31-12-1999 instead of 01-01-2000.

Civil revision stands disposed of accordingly.

{Hemant Gupta}
Judge

24-10-2006
* Mandeep *

FAO 572 of 2003

Ude Veer & others v Om Parkash & others

Mr.Vinod Gupta, Advocate, for the appellants

Mr.Neeraj Khanna, Advocate, for the respondents

UMA NATH SINGH, J.

This FAO by the owner of the offending vehicle arises out of an award dated 30-07-2002 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Rohtak, in MACT case No.70 of 1989 awarding a sum of Rs.1,50,000/- with 9% interest per annum in injury case of one Om Parkash having 30% permanent disability and 5% temporarily.

Learned counsel for the appellants submitted that the onus to prove that the driver of the offending vehicle was not holding a valid driving licence at the time of accident, lies on the insurance company. However, the learned Tribunal has come to a finding that the driver was not holding a valid driving licence only on account of the grounds of spelling mistakes in the driving licence issued by the transport authorities, Sonepat. Apart from that, learned counsel also submitted that in terms of the judgement of the Hon'ble Apex Court right from the case 2004(1)ACJ1 National Insurance Company Ltd. vs. Swaran Singh and others till date in such cases only the Insurance Company should be held liable to pay the compensation and in case the owner is found to have not exercised due diligence in verifying the licence, the recovery right is granted to the company.

I have carefully examined the award and also perused the statement of Urba Dutt, RW2,the licencing clerk, SDM's Office, Sonepat, who appeared with complete record as summoned by the Tribunal. The said statement on reproduction reads as under :-

"RW2-Urba Dutt, Licencing Clerk on SA

I have brought the summoned record i.e. the record of Licence NO.38450-S. It was issued in the name of Charan Jeev Singh son of Gur Charan resident of Mahalana Road, Sonepat. This licence was issued on 08-02-1989 for MMV. It was renewed till 07-02-1995.

xxxby Shri Atul Goyal, learned counsel for respondent No.2

It is incorrect to suggest that I have not brought the summoned record.

Xxx by Shri Kuldeep Singh, learned counsel for the petitioner

Nil. Opportunity given."

Thus, it appears that the licence said to have been issued to the driver of the offending vehicle was not issued in his name by the licencing authority, Sonepat.

Accordingly, I find no infirmity in the findings of the Tribunal. However, in terms of the judgement of Hon'ble Supreme Court in Swarn Singh's case (supra) the Insurance Company shall pay the compensation amount to the claimants and would be entitled to recover it from the owner.

With the aforesaid modification in the award, the FAO is hereby dismissed.

23-08-2006 (Uma Nath Singh)
* Mandeep * Judge

FAO 3529 OF 2002

Jeet Singh v Gurmej Singh & others

Mr.Anil Khetarpal, Advocate, for the appellant

UMA NATH SINGH,J.

In this FAO by the claimant against an award dated 05-06-2002 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Kurukshetra, in MACT case No.39 of 2001, learned counsel submitted that the appellant's claim petition was rejected only on the ground that he was responsible for the accident.

To get over the finding of the Tribunal, learned counsel submitted that when the Investigating Officer was summoned in witness box asRW1, he has categorically stated that he did not try to trace out the tractor responsible for causing the death of the motor-cyclist. This submission of the learned counsel does not have any bearing on the finding of the Tribunal inasmuch as the Tribunal has already held him rash and negligent and it is immaterial as to whether the accident resulted in death or injury by another vehicle after the accident had occurred due to rash and negligent driving of the claimant-appellant. This is not the appellant's case that he was not a party to the accident and the accident did not take place on account of collision between the minor cyclist and the tractor driver.

I have carefully examined Exhibit P25, the site plan which indicates that the accident took place on the left side of the victim. Accordingly, on account of dearth of material, I do not find any ground to get aside the impugned award.

Hence the same is affirmed and the appeal is dismissed.

23-08-2006
* Mandeep *

(Uma Nath Singh)
Judge

Crl Misc 14596-M of 2007

Mr.Jaideep Verma, Advocate, for the petitioners

The petitioners are facing trial in the Court of learned Judicial Magistrate First Class, Ludhiana. During the pendency of the trial, they filed an application dated 27-11-2006 (Annexure P-3) for dispensing with their personal appearance for 01-12-2006 and till final disposal of the case. The learned trial Magistrate on 01-12-2006 (Annexure P-4) allowed the exemption application on the grounds mentioned in the application. The case was adjourned to 03-02-2007 for prosecution evidence. On 03-02-2007, the learned trial Magistrate realised that inadvertently the words "for today" had been omitted in the order dated 01-12-2006. In other words, the learned trial Magistrate had, in fact, exempted the presence of the petitioners only for 01-12-2006 and not for the future dates.

Learned counsel for the petitioners submits that the petitioners have shifted to Jaipur. Besides their ages are 58 and 59 years respectively. In support of his submission, with regard to the inability of the petitioners to appear on each date, he has referred to two medical certificates dated 16-02-2007 (Annexures P-1 & P-2) in respect of the petitioners issued by Dr.Vinay Soni, M.D.Physician at Jaipur. Therefore, it is submitted that presence of the petitioners during the trial of the case is liable to be exempted.

After giving my thoughtful consideration to the matter, it is appropriate to note that the medical certificates dated 16-02-2007 (Annexures P-1 and P-2) have been issued after the filing of the application dated 27-11-2006 (Annexure P-3). These medical certificates which have been issued after the filing of the application before the trial Court for seeking exemption cannot at this stage be considered for the grant of exemption for all dates. Therefore, no fault can be found with the order of the learned trial Magistrate in holding that the exemption of the petitioner, in fact, had only been allowed for one date i.e. 01-12-2006.

Consequently, no ground is made out for interference in the impugned order.

This petition is, therefore, dismissed. However, the petitioners would be at liberty to file fresh application before the trial Court, if so, advised.

{S.S.Saron}

Judge

08-03-2007

* Mandeep *